

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0446
Sales and Withholding Tax
Responsible Officer
For the Tax Period 2000-2002

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ISSUE

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), Indiana Department of Revenue v. 654 N.E. 2nd 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed food and beverage taxes, sales taxes, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said trust taxes during the tax years 2000-2002. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2d 279 (Ind.1995), any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales taxes to the state.

The taxpayer submitted substantial documentation to demonstrate that she had no duty to collect and remit sales taxes to the state. Therefore, she is not personally responsible for the payment of the corporate trust taxes.

Finding

The taxpayer's protest is sustained.

KMA/JMM/05/29/09